IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 210 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMKUBHAI VALKUBHAI DHAKHDA
Versus
STATE OF GUJARAT & ANR

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Appearance :
MR ASHISH M DAGLI for Applicant
MS DS PANDIT for Respondent No.1
NOTICE SERVED for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 01/12/2005

ORAL JUDGMENT

1.Heard learned advocate Mr.Ashish M. Dagli for the applicant and learned APP Ms.D.S.Pandit for the respondent No.1 – State of Gujarat. Notice is served to respondent No.2.

2.The present respondent No.2, original complainant – Raghjibhai Hemabhai Patel, being a Chief Officer of Rajula Municipality on 20.10.2003 had been directed by present applicant, original accused, who was President of Rajula Municipality, at 5.30 p.m. to sign a cheque as Chief Officer of Municipality. When complainant, respondent No.2 herein brought to the notice of the accused that being a Chief Officer, he would sign the second cheque only when first cheque was presented before the Bank. On saying so by the complainant, the accused, present applicant got excited and assaulted complainant with a knife and caused hurt as well as administered threat to kill. The complainant, Chief Officer presented a

complaint before the Police Station at Rajula and obtained medical treatment. The complaint came to be registered for the charge under Sections 332, 324, 504 and 506(2) of the Indian Penal Code and under Section 135 of the Bombay Police Act. A charge-sheet of abovesaid offences was submitted before the learned Judicial Magistrate (F.C.) at Rajula which was registered as Criminal Case No.81 of 2004. At the stage of framing of the charge, the accused i.e. present applicant presented an application at Ex.11 before learned Magistrate to drop the proceedings against him by virtue of the provisions of Sections 73 and 254 of the Gujarat Municipality Act as well as according to the accused, the alleged act was committed in pursuance of official duty and no Court can take cognizance of said offences under Section 197 of Code of Criminal Procedure for want of necessary sanction. It was also contended that no Court can take cognizance of the said

offence under Section 195(1)(a)(i), as in fact the act alleged was covered under Section 186 of the Indian Penal Code and Section 332 is a broader form of the offence as defined under Section 186 of the Indian Penal Code. The stand was taken that the offence under Section 332 of the Indian Penal Code can only be said to have been committed, if the offence under Section 186 of the Indian Penal code is committed. It was, therefore, urged that the offence of Section 332 includes the offence under Section 186 of the Indian Penal Code and cognizance was clearly barred by Section 195(1)(a)(i) as there was no complaint by concerned public servant as envisaged. The learned Judicial Magistrate (F.C.), Rajula, after relying upon certain decisions, accepted the plea of the accused and came to the conclusion that the offence under Section 332 of the Indian Penal Code was inclusive of an offence as defined under Section 186 of the Indian Penal Code and

cognizance of which was barred by Section 195 as aforesaid unless conditions are fulfilled under Section 195 of the Code of Criminal Procedure. It was further observed by the learned Judicial Magistrate (F.C.) that the accused was a public servant by virtue of Section 73 of the Gujarat Municipality Act and also under Section 121 of the Indian Penal Code. Therefore also, taking of cognizance was barred by the Magistrate by virtue of Section 197 of the Code of Criminal Procedure as required sanction was not obtained, even under Section 254 of the Gujarat Municipality Act.

3. On filing Criminal Revision Application by the original complainant in the Court of Sessions at Amreli, the learned Sessions Judge, Amreli vide his order dated 21.02.2005 came to the conclusion that for the offences punishable under Sections 332, 324, 504 and 506(2) of the Indian Penal Code, neither the cognizance was barred nor sanction was required, either under

Section 197 of the Code of Criminal Procedure or under Section 254 of the Gujarat Municipality Act. The learned Sessions Judge, Amreli quashed the order passed by the learned Judicial Magistrate below an application Ex.11 and an application filed by the present applicant came to be dismissed and hence, this Criminal Revision Application.

4. Learned advocate Mr.Dagli for the applicant stated that Section 186 is included in Section 332 of the Indian Penal Code and, therefore, when cognizance is barred by law except upon the complaint by the public servant, the learned Judicial Magistrate could not take the cognizance for the offence alleged to have been committed in the course of same transaction. The submission was in view of the decision of this Court in the matter of **RAMJI BHIKHA KOLI & ORS. Vs. STATE OF GUJARAT**, as reported in **1999 (1) G.L.H. 203**, where it was observed that the offence punishable under Section 186 of the

Indian Penal Code cannot be splitted from the other offence, it was barred for the Magistrate to take cognizance of such other offences also. Secondly, it was submitted that undoubtedly, President of Municipality is a public servant and the act which is complained of in respect of directing the complainant to sign a cheque was in pursuance of the official duty and, therefore, taking of the cognizance of the charge-sheet filed against the applicant was also barred under Section 197 of the Code of Criminal Procedure.

5. Appreciating and evaluating the facts of the case as well as submissions made on behalf of the applicant, it would be necessary to find out whether Section 197 was attracted or not in the present set of facts. True it is that the protection of Section 197 is available to the accused when concerned Court is satisfied that alleged act done by the public servant is reasonably connected with the discharge of his

official duty and is not merely a cloak for doing the objectionable act. The phrase occurring in Section 197 of the Code of Criminal Procedure that “While acting or purporting to act in the discharge of his official duty” establishes that the act complained of must fall within the scope and range of his official duty of the accused. Needless it is to say that the provision of Section 197 of the Code of Criminal Procedure must be strictly construed while applying the same to any act complained of might have been committed during the course of employment.

6. Thus, the essential requirement postulates for sanction to prosecute the public servant is that the offence alleged against the public servant must have been done while acting or purporting to act in the discharge of his official duties. In such a situation, it necessarily postulates that the act of public servant must be in furtherance or performance

of his official duties. Meaning thereby that the act or omission complained of must be integral to performance of public duty. The test is to inquire as to whether the crime and the official duty are so integrally connected that they are inseparable. If, the crime and the official duty are inseparably integrally connected, it could be safely said that the public servant committed the act while acting or purporting to act in the discharge of his official duties.

7. In the matter of **CENTRE FOR PUBLIC INTEREST LITIGATION AND ANOTHER Vs. UNION OF INDIA AND ANOTHER**, the issue came up for consideration before the Apex Court and the Hon'ble three Judges Bench of the Apex Court in a decision of the above matter as reported in **(2005) 8 S.C.C. 202** observed in paras 9, 10 and 11 and laid down a test to determine whether the act complained of falls within the ambit of “official duty” of the public servant. The Apex

Court observed as under in paras-9, 10 and 11 of the above decision.

> "**9**. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise, it complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably

connected with the discharge of his official duty and is not merely a cloak for doing the the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or

purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act

complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

10. Use of the expression “official duty” implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but

restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

11. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed."

Thus, real test to determine is whether the act falls within the scope and range of official duty of the public servant concerned. The quality of the act decides whether the act falls within the range of his official duty.

8. Examining the allegations made as it is, it is apparently clear that the act alleged to assault the complainant with knife to cause hurt, abusing him and to threat him for killing

by no stretch of reasoning could be said to be an act falling in the range of the official duty of the President of Municipality. While he acts with the Chief Officer of the same Municipality, the use of admonishing language in connection with the duty of the Subordinate Officer may be inclusive of performing a duty but attacking upon the Chief Officer or administrative staff by the President of the Municipality, in the given set of circumstances cannot fall within the purview of his official duty as to afford protection under Section 197 for doing the objectionable act. Thus, the official duty of the present applicant to get the cheques signed from Chief Officer of the Municipality is not integrally connected with the act of attacking and abusing the Chief Officer of Municipality. The conclusion arrived at by the learned Additional Sessions Judge (Fast Tract Court Judge) in Revision Application, therefore, is unexceptionable. The

act complained of against the applicant on facts is not done in discharging his official duties by the present applicant.

9. While discussing the second aspect of the matter that whether the offence as described under Section 186 of the Indian Penal Code is included in offence under Section 332 of the Indian Penal Code, undoubtedly one cannot by any reasoning come to the conclusion that the offences as described under Section 186 and the offences as described under Section 332 of the Indian Penal Code are the same and the offence described under Section 332 of the Indian Penal Code is a greater form or a broader form of the offence described under Section 186 of the Indian Penal Code. Bare reading of both the provisions make it amply clear that both offences are distinctly different. One is committed, while public servant is obstructed, the other is said to have been committed while public servant is not only obstructed but is

hurt by the accused.

10. If we derive analogy from other similar provisions of the Indian Penal Code, the Apex Court, in the matter of **DURGACHARAN NAIK AND OTHERS Vs. STATE OF ORISSA**, as reported in **AIR 1966 S.C. 1775**, made it clear that Sections 186 and 353 of the Indian Penal Code relate to two distinct offences. Similarity in both of Sections of Indian Penal code is obstruction to a public servant in public duties, but the quality of the two offences are altogether different. The Apex Court observed in paras-**5** and **6** as under:

> **5.** We pass on to consider the next contention of the appellants that the conviction of the appellants under S. 353, I. P. C. is illegal because there is a contravention of S. 195 (1) of the Cr. P. C. which requires a complaint in writing by the process server or the A. S. I. It was submitted that the charge

under S. 353, I. P. C. is based upon the same facts as the charge under S. 186, I. P. C. and no cognizance could be taken of the offence under S. 186, I. P. C. unless there was a complaint in writing as required by S. 195 (1) of the Cr. P. C. It was argued that the conviction under S. 353, I. P. C. is tantamount, in the circumstances of this case, to a circumvention of the requirement of S. 195 (1) of the Cr. P. C. and the conviction of the appellants under S. 353, I. P. C. by the High Court was, therefore, vitiated in law. We are unable to accept this argument as correct. It is true that most of the allegations in this case upon which the charge under S. 353, I. P. C. is based are the same as those constituting the charge under S. 186, I. P. C. but it cannot be ignored that Ss. 186 and 353, I. P. C. relate to two

distinct offences and while the offence under the latter section is a cognizable offence the one under the former section is not so. The ingredients of the two offences are also distinct. Section 186, I. P. C. is applicable to a case where the accused voluntarily obstructs a public servant in the discharge of his public functions but under S. 353. I. P. C. the ingredient of assault or use of criminal force while the public servant is doing his duty as such is necessary. The quality of the two offences is also different. Section 186 occurs in Ch. X of the I. P. C. dealing with Contempts of the lawful authority of public servants, while S. 353 occurs in Ch. XVI regarding the offences affecting the human body. It is well established that S. 195 of the Cr. P. C. does not bar the trial of an accused person for a distinct offence

disclosed by the same set of facts but which is not within the ambit of that section. In Satis Chandra Chakravarti v. Ram Dayal De, 24 Cal WN 982: (AIR 1921 Cal 1), it was held by Full Bench of the Calcutta High Court that where the maker of a single statement is guilty of two distinct offences, one under S. 211, I. P. C., which is an offence against public justice, and the other an offence under S. 499, wherein the personal element largely predominates, the offence under the latter section can be taken cognizance of without the sanction of the Court concerned, as the Criminal Procedure Code has not provided for sanction of Court for taking cognizance of that offence. It was said that the two offences being fundamentally distinct in nature, could be separately taken cognizance of. That they are distinct in

character is patent from the fact that the former is made non-compoundable, while the latter remains compoundable; in one for the initiation of the proceedings the legislature requires the sanction of the Court under S. 195, Cr. P. C., while in the other, cognizance can be taken of the offence on the complaint of the person defamed. It is pointed out in the Full Bench case that where upon the facts the commission of several offences is disclosed some of which require sanction and others do not, it is open to the complainant to proceed in respect of those only which do not require sanction; because to hold otherwise would amount to legislating and adding very materially to the provisions of Ss. 195 to 199 of the Cr. P. C. The decision of the Calcutta case has been quoted with approval by this Court in Basirul-Huq v. State of

West Bengal, 1953 SCR 836: (AIR 1953 SC 293), in which it was held that if the allegations made in a false report disclose two distinct offences, one against a public servant and the other against a private individual, the latter is not debarred by the provisions of S. 195, Cr. P. C., from seeking redress for the offence committed against him.

6. In the present case, therefore, we are of the opinion that S.195, Cr.P.C. does not bar the trial of the appellants for the distinct offence under S. 353 of the I. P. C. though it is practically based on the same facts as for the prosecution under S.186, I.P.C.

11.In the present case, instead of Section 353, the applicant is charged under Section 332 of the Indian Penal Code. Section 353 of the Indian Penal Code provides for using criminal force, while Section 332 of the Indian Penal

Code provides for causing hurt to the public servant, while discharging his duties. When the Apex Court has held that Section 353 is distinct offence from Section 186 of the Indian Penal Code, it must be held that Section 332 of the Indian Penal Code is also distinct offence from the offence as described under Section 186 of the Indian Penal Code. The facts of the case also make it abundantly clear that most of the allegations are forming part of ingredients of Section 332 of the Indian Penal Code. Therefore, when no offence under Section 186 of the Indian Penal Code is charged against the accused, the question of bar as placed by the law in the shape of the provision of Section 195(2)(a)(i) would not arise at all. Learned Sessions Judge was correct in coming to the conclusion that the accused was charge-sheeted for the offence punishable under Section 332 of the Indian Penal Code which is separate and different offence from the offence described by

Section 186 of the Indian Penal Code and, therefore, the contentions that even for the offence punishable under Sec.332 such bar is operating, cannot be accepted. Thus, no interference is required in the decision of the learned Sessions Judge. Even otherwise also, the real test to determine the controversy is to ascertain the intention of the legislature. Had it been so, that is to say that if the offence committed under Section 186 of the Indian Penal Code and the offence committed under Section 332 of the Indian Penal Code were to be considered as connected with each other as contended, then, Section 332 of the Indian Penal Code would have been included in the provision of Section 195(1)(a)(i) of the Code of Criminal Procedure.

12.The decisions which learned Magistrate relied upon and relied upon by the learned advocate for the applicant would not be applicable to the facts of the case, because precisely

controversy revolves around in this case is whether provision of Section 332 of the Indian Penal Code would include the offence described under Section 186 of the Indian Penal Code.

13. Needless, it is to observe that the observation made in this order in respect of an application Ex.11 filed by the accused at the juncture of framing of the charge at prima facie stage and the learned Magistrate shall not be influenced during trial by the observation of this Court in this order.

14. In above view of the matter, this Criminal Revision Application stands dismissed at this admission stage. Notice is discharged. Interim relief, if any, granted earlier, stands vacated.

[J. R. VORA,J.]

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